

COUNCIL POLICY STATEMENT

Policy No. 56
Date Issued May 16, 1995
Effective Date May 16, 1995
Cancellation Date _____

General Subject: DEVELOPMENT AGREEMENTS

Supersedes No. _____

Specific Subject: Policy for use of Development Agreements pursuant to California Government Code Section 65864 et seq.

Copies to: City Council, City Manager, City Attorney, Department of Division of Heads, Employee Bulletin Boards, Press, File

BACKGROUND:

The City Council has from time to time been requested by property owners and developers of major planned development projects to enter into Development Agreements in order to "vest" in the applicant the right to build the project.

Government Code Sections 65864 through 65869.5, authorizes a city to enter into a Development Agreement with a private property owner or developer, based upon the following Legislative findings:

- "(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.
- (b) Assurance to the applicant for a development project that, upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development."

A Development Agreement is an appropriate mechanism by which the City and a developer may establish certainty that the developer will be allowed to develop a planned project following its approval by the City, and by which the City and the developer may contractually commit to perform their respective obligations regarding the project.

PURPOSE:

To establish a policy regarding the requirements which must be met before the City Council will approve a Development Agreement.

To establish a procedure for processing applications for and negotiating the terms of a Development Agreement and a staff review committee to apply the requirements of this policy to such applications and negotiations.

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It is not the intent of this policy to relieve any developer of responsibilities for public improvements or conditions of development related to the subdividing of property, the processing of tentative or final parcel maps, the approval of permits or development plans, or the approval of master plan developments.

POLICY:

1. Determinations to be Made by City Council. The City may approve a Development Agreement under the provisions of this policy where the City Council determines the following:
 - a) The proposed development is in the interests of the City;
 - b) The proposed development is a well-planned, comprehensive development, involving more than one building, more than one phase of development, or some other condition that the City Council considers justification for entering into a Development Agreement;
 - c) The proposed development will require a substantial expenditure by the applicant of time, predevelopment costs and "holding" costs prior to the approval of permits and other land use entitlements;
 - d) The proposed development will require a substantial expenditure by the applicant to design and construct public infrastructure facilities that will benefit the community;
 - e) The proposed Development Agreement is consistent with the requirements of this Policy;
 - f) The proposed Development Agreement includes legally binding commitments by the applicant to provide substantial public benefits over and above those which the applicant would otherwise be obligated to provide as a condition of project approval in the absence of a Development Agreement; and
 - g) It is unlikely that the proposed development, including the public benefits to be derived therefrom, would occur when and as provided in the proposed Development Agreement in the absence of the vesting assurances incorporated in the proposed Development Agreement.
2. Types of Projects. Projects which may be considered for a Development Agreement may be residential, commercial, industrial, recreational or mixed-use.

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3. Cost of Processing and Negotiating. Upon application for a Development Agreement, and in addition to any base application fee, the applicant shall deposit with the City a letter of credit or funds in a sum sufficient to pay all City fees and costs in connection with review and negotiation of the Development Agreement, including without limitation, the cost of preparing an environmental impact report, financial feasibility or other economic analyses, models and studies which may reasonably be required, and the cost of City staff and consultants, including legal counsel, to be incurred in the review and negotiation of a proposed Development Agreement. The City shall be entitled to draw down on such sum as costs are incurred and shall report to the applicant periodically during the review and negotiation period.
4. The Project Site. A Development Agreement shall apply only to real property within the City of Carlsbad owned by the applicant or with respect to which the applicant has an equitable interest that would permit the applicant to carry out its obligations pursuant to the proposed Development Agreement. To satisfy this requirement, the applicant shall demonstrate at the time of application, that the applicant either owns the property, has a long-term lease (with a remaining term of at least 30 years), an option to purchase, or other equitable interest in the property, sufficient to permit the applicant to perform its obligations pursuant to Development Agreement. In addition, the applicant shall provide full and complete disclosure of the identity of any other property owners or others whose approval will be required to permit the proposed development, and shall be responsible for obtaining all such approvals. The Development Agreement shall not purport to regulate or otherwise directly affect any property other than that which is the subject of the Development Agreement.
5. The Applicant/Developer. A Development Agreement may include property that is owned and/or controlled by one or more entities. The application for a Development Agreement shall be made by or on behalf of all such owners (collectively referred to in this Policy as the "applicant"). The Development Agreement shall identify each such owner and proposed developer(s) of the property and shall require that any changes in any such owner or proposed developer(s) must be approved by the City. At the time of application, the applicant shall provide full and complete disclosure of the identity of the applicant's principals, partners and, to the extent then known, the development team (i.e., architects, general contractors, etc.). If a development team has not been selected at the time of application for the Development Agreement, the Agreement shall provide that such

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selection is subject to the approval of the City. During the term of the Development Agreement, the City shall have the right to approve or disapprove any transfer or assignment of any part of the property that is subject to the Development Agreement. The applicant may not assign the Development Agreement, in whole or in part, without the prior written consent of the City. The City may impose reasonable conditions upon its approval of assignments or transfers of the Agreement or the property, or any part, as necessary to ensure that the project approved by the City will be developed in accordance with the Development Agreement.

6. Scope of Development. A Development Agreement shall include a full description of the proposed project to be developed, with such detail regarding land uses, density, building intensity, design, improvement and construction standards and specifications as the City may determine appropriate. The Scope of Development shall incorporate all conditions of approval imposed by the City. The Development Agreement shall commit the applicant to construct the project within the limitations of the Scope of Development unless otherwise approved by the City. Detailed site development plans shall be based on the Scope of Development.
7. Schedule of Performance. A Development Agreement shall include a schedule of performance, setting forth the respective times by which the parties are to perform their respective obligations under the Agreement. At a minimum, the Agreement shall obligate the applicant or developer, with respect to each component of the project, to complete its plans, construct or install all required infrastructure, satisfy all other conditions of approval, provide the public benefits as listed in the Development Agreement, and start and complete construction within a given time as set forth in the schedule of performance. The times of performance shall be subject to force majeure delays and to extension with the prior written consent of the City. The City may condition extensions of time upon the payment of fees or other consideration as it deems appropriate.
8. Method of Financing. A Development Agreement shall contain a description of the applicant's proposed method of financing both public and private portions of the project, including any infrastructure and other public benefits to be provided by the applicant. This Policy does not obligate the City to provide, guarantee or facilitate any financing for a private development project as the result of entering into a Development Agreement. On a case-by-case basis, the City may agree to include as part of a Development Agreement

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its commitment to provide, guarantee or facilitate financing needed for public improvements or facilities in connection with a project, in accordance with all other applicable rules, regulations and City policies.

9. Required Infrastructure. A Development Agreement shall contain a detailed listing of all on-site and off-site public facilities and improvements required in connection with a proposed project, the method of financing for each such improvement or facility and the timing of its construction or installation. The Agreement may require the applicant to finance and/or construct infrastructure:
 - a) That benefits other property in addition to the property subject to the Agreement;
 - b) In accordance with a schedule that requires the completion of the infrastructure before it is needed for the development project; and
 - c) As a condition of the issuance of building permits for some or all components of the proposed project.
10. Additional Public Benefits. A Development Agreement shall obligate the applicant to provide such additional public benefits in connection with the proposed project as the City may deem necessary or appropriate. Such additional public benefits shall be in addition to any fees, exactions or conditions which the City otherwise requires of the applicant as a condition of project approval, and may include those which, in the absence of a Development Agreement, would require compliance with Government Code Section 66000 et seq. Such additional public benefits may include, but not be limited to, the following, or monetary contributions to the City which may be applied by the City to accomplish one or more of the following:
 - a) Construction, installation and/or ongoing maintenance or public facilities and/or public improvements other than those required as a condition of approval of the project;
 - b) Acquisition and/or transfer or dedication of land to the City (or other public agency) for public uses;
 - c) Acquisition and/or transfer or dedication to the City of land for, development or subsidization of public parking;

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- d) Monetary contributions for sand replenishment programs, ocean water quality testing and research or other programs relating to environmental quality of beach and ocean-front areas of the City;
- e) Acquisition and/or transfer or dedication to the City of land for, development and/or long-term maintenance of public safety facilities, and/or support for public safety programs and operating costs;
- f) Acquisition and/or transfer or dedication to the City of land for, development and/or long-term maintenance of public parks and recreational areas or facilities, and/or support for park or recreational programs and operating costs;
- g) Acquisition and/or transfer or dedication to the City of land for, development and/or long-term maintenance of libraries, and/or support for library programs and operating costs;
- h) Other similar public benefits not specifically designated in this Policy.

The list of particular public benefits, and the amount to be required as contributions to the City, shall be determined on a case-by-case basis with respect to each Development Agreement, and shall be subject to the approval of the City Council. The amount shall be based on factors such as, but not limited to, the economic feasibility of the proposed project and the incremental economic benefit to be obtained by the applicant by reason of the Development Agreement.

11. Vesting Rights. A Development Agreement shall set forth the following:

- a) Permitted use of the property;
- b) Intensity of use;
- c) Maximum height and size of proposed buildings;
- d) Provisions for the reservation or dedication of land for public purposes;
- e) The conditions of approval, including all environmental mitigation measures;
- f) The "vested rights" of the applicant and its successors to develop the property in accordance with the permits and approvals for the property approved by the City prior to or concurrently with the Development Agreement, the general and/or specific plan, other City ordinances, rules, regulations and requirements in effect on the effective date of the Development Agreement;

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- g) Any exceptions to or limitations on the vested rights. At a minimum, the Development Agreement shall not prohibit the City from imposing new development fees or increasing the development fees in place at the time of approval of the Development Agreement, so long as such fees are applied generally. In addition, the City shall have the right to suspend issuing building permits when the City Council determines that a bona fide emergency situation required the suspension;
 - h) The extent to which the Vested Rights apply to subsequent phases of the project.
- 12. Annual Review. A Development Agreement shall set forth a procedure for annual review by the City of the Developer's compliance with the terms of the Development Agreement. Any determination that the Developer is not in compliance with the Development Agreement shall be subject to appeal to the City Council.
- 13. Extending Vested Rights to Other Projects Components. In the case of a proposed project containing more than one phase, or a project to be developed by more than one applicant, the "vested rights" described in Section 11 of this Policy shall apply to all or a portion of the entire property covered by the Development Agreement, as determined on a case-by-case basis. The City shall extend all or part of the vested rights of a Development Agreement to components of a project, on the basis of whether the City determines that such project component will provide substantial public benefits over and above those which the applicant would otherwise be obligated to provide as a condition of approval of such component in the absence of a Development Agreement, and whether it is unlikely that the proposed component (including the public benefits to be derived therefrom), would be developed when and as provided in the proposed Development Agreement in the absence of the vesting assurances incorporated in the proposed Development Agreement.
- 14. Other City Commitments. A Development Agreement shall set forth any other commitments made by the City to facilitate the development, including, but not limited to, the following:
 - a) Public facilities and improvements to be financed and/or constructed by the City;
 - b) Agreement to establish assessment districts and/or issue bonds to finance public facilities and improvements to be financed and/or constructed by such district; and
 - c) City's agreement to coordinate with other public agencies in connection with the proposed project.

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15. Applicable Requirements. A Development Agreement shall not supersede or waive the obligation of the applicant or its successors to pay any otherwise applicable development fee, or to comply with any applicable laws, regulations, ordinances and policies, including but not limited to: state or federal requirements that take precedence over the Development Agreement, including but not limited to the California Environmental Quality Act (CEQA) and guidelines implementing CEQA; all applicable health and safety requirements, and any other subsequent city permit and discretionary review requirements.
16. Term of Agreement. The term of a Development Agreement shall be the period of time during which the vested rights shall remain in effect. Such term shall be determined on a case-by-case basis, in light of all the relevant factors, including, but not limited to, the proposed build-out period in the Schedule of Performance.
17. Continuing Obligations. A Development Agreement shall obligate the applicant to provide long-term maintenance of any public facilities or improvements required by the applicant or required as a condition of approval of the project.
18. Additional Provisions. A Development Agreement shall contain such additional terms, conditions and provisions as the parties shall deem necessary or appropriate for the proposed development project.
19. Form and Content of Agreement. An applicant may present to the City for review a proposed form of Development Agreement for consideration by the City; provided, however, that the City shall have the right, in its sole discretion, to prepare, modify or replace in its entirety the proposed Development Agreement, and to take responsibility for drafting and revising the document. A Development Agreement shall have no force or effect until the City Council approves the final form and content of the Development Agreement in accordance with all applicable procedural requirements.

PROCEDURE:

1. An applicant desiring to enter into a Development Agreement with the City shall submit an application, signed by all parties proposed to be signatories to the Agreement, requesting that the City consider entering into a Development Agreement, which shall include the following:

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- a) Description of the boundaries of the property proposed for inclusion in the Agreement;
 - b) Disclosure of all persons having a legal or equitable interest in the property, including any proposed developers of the property;
 - c) Description of the proposed project, including, but not limited to, a Scope of Development, Schedule of Performance, Project Budget and proposed Method of Financing; and
 - d) Explanation of how the proposed project meets the criteria set forth in Section 1 of the Policy.
2. At the time of application, the City shall inform the applicant of the amount to be deposited with the City in accordance with Section 3 of the Policy. In order for an application to be complete, the applicant shall deposit such funds or letter of credit with the City.
 3. It is the intention of the City Council that applicants have an early opportunity to have the proposal reviewed by City staff for compliance with this Policy. In that regard, the City Council hereby directs the creation of the Development Agreement Review Committee, considering of the City Manager, City Attorney, Community Development Director, Financial Management Director, Finance Director, Planning Director and City Engineer. The Committee shall meet on request with applicants to review a project to determine whether or not the project qualifies for consideration of a Development Agreement. Committee review shall take place prior to the presentation of the project to City Council. If the Committee determines that the project is eligible, the Committee shall present to City Council the proposed project with a recommendation to enter into negotiations with the applicant. The Committee shall at the same time recommend a specified time period for the negotiations to occur, it being the intention of the City Council that a Development Agreement be processed for approval concurrently with any necessary land use entitlements for a project. The Committee may require the applicant to furnish such additional information concerning the project or the applicant as necessary to make a full report to City Council.
 4. If the City Council approves the recommendation, the Committee shall enter into negotiations with the applicant for the preparation of a Development Agreement. Unless otherwise determined by the Committee, the City will be responsible for preparing and revising drafts of the document. During negotiations, the parties shall meet as often as

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reasonably necessary to resolve any issues and to complete all documents in an expeditious manner.

5. Where there are multiple applicants, they shall designate a spokesperson authorized to act on their behalf in their negotiations with the City.
6. The negotiations shall be complete when the Committee and the applicants agree on the terms, conditions and provisions of the proposed Development Agreement, and the applicant executes a draft Development Agreement to be presented to the City Council concurrently with any necessary land use entitlements for the project.
7. A draft Development Agreement acceptable to the Committee and signed by the applicant shall then be processed for approval in accordance with all procedural requirements of the Development Agreement Law.